

Washington State Auditor's Office
Whistleblower Report

Department of Transportation

Report No. 1004974

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WASHINGTON
BRIAN SONNTAG
STATE AUDITOR



**Washington State Auditor
Brian Sonntag**

January 18, 2011

Department of Transportation
Olympia, Washington

Report on Whistleblower Investigation

Attached is the official report on Whistleblower Case No. WB 09-017 at the Department of Transportation.

The State Auditor's Office received an assertion of improper governmental activity at the Department. This assertion was submitted to us under the provisions of Chapter 42.40 of the Revised Code of Washington, the Whistleblower Act. We have investigated the assertion independently and objectively through interviews and by reviewing relevant documents. This report contains the result of our investigation.

Questions about this report should be directed to Director of Special Investigations Jim Brittain at (360) 902-0372.

Sincerely,

BRIAN SONNTAG, CGFM
WASHINGTON STATE AUDITOR

BS:JB

cc: Steve McKerney, Director of Internal Audit
Governor Chris Gregoire
Melanie de Leon, Executive Director, Washington Executive Ethics Board

Whistleblower Investigation Report

State of Washington Department of Transportation

ABOUT THE INVESTIGATION

On August 21, 2008, the State Auditor's Office received whistleblower assertions of gross waste of public funds regarding a Department of Transportation road construction project.

Specifically, the complaint asserted the Department failed to properly manage a road-widening project. The assertions stated inadequate management led to design errors, environmental violations, payroll/force account issues and unnecessary expenditures.

Completion of our investigation was complicated by the time it took for the Department to locate and provide information we requested, the volume of the records to be organized and reviewed, and interviews with numerous individuals, including the subjects of the assertions and Department staff.

The Department also investigated these issues and some of our report is based on that investigation.

BACKGROUND

On August 15, 2003, the Department awarded a contract for a 3.5-mile road-widening project on State Route 18 between Maple Valley and the Issaquah/Hobart Road to reduce congestion and enhance safety. It included bridges and retaining walls and was built in areas containing wetlands. The project was part of an effort to widen a 21-mile stretch of State Route 18 to four lanes.

The Department awarded the contract to the lowest responsive bidder for \$55.9 million. Work began on September 15, 2003, and was completed on August 21, 2008, at a total contract cost of \$78.8 million.

The Department and the contractor signed the final certification form on January 15, 2009. The form shows the contractor was paid \$78.8 million. This is a 40.7 percent increase from the original bid amount.

The total project cost, including the contract amount, sales tax, engineering inspection and local agreements, was \$98.5 million.

The project was paid with \$45 million in federal funds and \$53.5 million in state funds.

The breakdown of the total project cost is shown below:

<u>Category</u>	<u>Anticipated Amount</u>	
01 Contract	85,774,590.28	(payments to contractor)
02 Agreements	2,555,978.08	(task agreements and consultant agreements)
03 Engineering	10,069,763.94	(Department construction project office engineering costs)
04 SF Work	23,800.00	(force account work)
05 Materials	400.00	
99 Vend. Supp SV & MA	<u>72,500.00</u>	(vendor supplied services and materials)
TOTAL:	98,497,032.30	

The amount of expenditures in Category 01 (\$85.7 million) includes \$6.9 million in sales tax the Department paid the contractor in addition to the \$78.7 million contract cost. This is standard practice and required by the Department of Revenue.

ASSERTION

Department of Transportation project engineers failed to ensure a highway transportation contract was properly managed, monitored and controlled, resulting in a gross waste of public funds.

RESULTS

For the construction portion of this project, the Department assigned a succession of three construction project engineers to this undertaking, with the original project engineering closing out the project. Two of these engineers were named as subjects in the whistleblower assertions. The second project engineer was not named as a subject. We found the actions of the first project engineer constituted a gross waste of public funds, which is an improper governmental action under the whistleblower law. We also found gross waste of public funds across the divisions responsible for this project.

The Department had previously taken corrective action against the first project engineer.

We found no reasonable cause to believe an improper governmental action occurred on the part of the third project engineer. The Department had asked this individual to take over this project after the issues detailed below had occurred. The Department assigned him to reorganize the project construction office, get the contract back on schedule and to address the environmental issues.

This report details concerns or deficiencies found in project design, change orders, payroll/force account, environmental regulation violations and fines, woody debris storage, timber sales, construction site pumps and other issues.

Project Design

The Department assigned primary responsibility for this project to its Northwest Region. Other offices that had a hand in the project and their responsibilities are listed in Attachment 1 of this report. The Department stated the project was assigned to a design project office that would have the responsibility to coordinate all information between various offices with responsibilities for the project.

The design of this project was based on information and data collected by a Digital Terrain Model (DTM)¹, which in this case used aerial photography to create an electronic, three-dimensional map of the project area. That information was used to calculate the slope of the area, estimate earthwork quantities and height and length of retaining walls. However, according to a witness we interviewed during the investigation, the Department cannot generate accurate readings or data using this method when working with a large, densely forested area, which was the case for this project. Basing the project design on inaccurate data led to multiple errors and increased project costs.

The Department stated at the time of the design, it did not have a policy in place requiring designers to field-verify aerial surveys. However, our Office was informed that the Department has since established a formal policy that requires designers to establish ground control in densely forested areas and at walls, structures, etc.

The Department further stated that the situation was identified early in the project. The construction project engineer identified and corrected this deficiency through a series of change orders, which modified the size of retaining walls and quantities of earthwork. These added costs should have been included in the original cost of the project.

During the design phase, several Department employees review documents and recommend changes. In this case, a Department employee noted in an e-mail, dated January 29, 2003, prior to the contract going out for bid, suggested corrections had not been incorporated in the plans. The designer's responses said they had been corrected; however, the changes did not show up on the project plans. The employee submitted the corrections a second time.

In e-mails dated June 12-19, 2003, after the contract had been advertised, a Department employee stated: *"Reality is that the contract plans were not at 100%, they were not even at 90%. Possibly after Addendum #2 we will be at 100% plans."* The e-mail goes on to state: *"Meeting the addendum date of June 17 is critical as we cannot afford additional bid opening delay."*

The Department stated the responsibility for ensuring the plans, specifications and estimates are accurate rests with the design project engineer. The engineering manager and the design project engineer jointly ensure all comments are addressed during design.

Additionally, witnesses stated it is Department practice to obtain environmental and other permits and approvals and incorporate them into the language of the contract prior

¹ A digital terrain model generally refers to a representation of the Earth's surface, excluding features such as vegetation, buildings, bridges, etc. It provides a so-called bare-earth model, devoid of landscape features. *Source: Wikipedia*

to advertising it for bid. That did not happen in this case, which created a situation in which bidders could miss permit conditions.

The Department stated it has formal criteria on when to allow a project to be advertised before it secures environmental permits. It further stated that in this case, the approval was obtained and the project did proceed into advertisement without all permits, but the permits were obtained prior to project award. It is the joint responsibility of the design project engineer and the construction project engineer to ensure that any addendum provides the contractor with adequate information and time to incorporate the changes into the contractor's proposal. In this case, the Department stated the complexity of the environmental commitments was likely not fully comprehended by any party.

We also found the design office did not have an accurate estimate of the amount of space that would be needed for storage of trees and woody debris on the project site. Witnesses stated staff repeatedly commented on environmental mitigation issues and that questions asked during the design phase were never resolved and the storage issue was not addressed as construction moved forward. The Department's internal environmental investigation stated, *"There were pressures to meet the project advertisement date, so these questions carried over into construction."* As a result, environmental violations occurred that added millions of dollars to the overall cost of the project.

We also found the contract called for retention ponds to collect stormwater for treatment before being discharged into state waters. For this project, the Department of Ecology set specific standards for stormwater discharge. The initial contract did not address these requirements. The Department later had to approve a change order for \$1.37 million for a certain type of filtration system to meet the standards. In the change order justification, the Department stated *"... the contract special provision and plans were in conflict. The ambiguities and lack of clarity resulted in a bid item that was not constructible."*

The Department stated the ponds, as designed, did not meet the Department of Ecology's (Ecology) criteria. Transportation told us it has since provided clearer direction and guidance to design project engineers on stormwater requirements, particularly for interim, or construction, treatment of stormwater runoff.

The Department had to pay \$21,289 to an environmental consultant to help design the system. The consultant then hired a subcontractor to monitor and maintain the system. From February 2005 to April 2007, the subcontractor was paid \$1,507,521. The costs of the monthly monitoring and operation ranged from \$65,000 to \$141,000 per month.

The Department stated it now provides detailed plans for the treatment of stormwater during construction and has continued to update its Highway Runoff Manual to clarify requirements and best practices. The Department incorporates this requirement into the initial project estimates. The Department also stated it routinely uses private sector expertise to augment existing staff or to provide unique skills. The environmental consultant worked closely with the Department's engineer to develop a design that met the new stormwater runoff requirements for construction projects.

Change Orders

Change orders are contract modifications that occur after execution of a contract to pay for increased costs or additions to a project.

For this 3.5-mile road-widening project, the Department issued 156 change orders totaling approximately \$16.4 million. Examples of information or errors in the signed contract that required change orders include:

- Information left out of the contract.
- Summary of quantities of earthwork.
- Bridge girder lengths incorrectly listed in contract plans.
- Bridge girder inserts shown on contract plan sheets as horizontal should be vertical.
- Retaining walls' height and length incorrect in contract plans.
- Approach slab to bridge was designed too narrow.
- Sufficient amount of rebar was missing in contract plans.
- Retention pond designs did not meet Department of Ecology requirements.
- Unsuitable soil not discovered during aerial photos.
- State survey missed conflict between fence and utilities and fence work had to be redone.

As stated above in the section on project design, the Digital Terrain Model (DTM) can generate inaccurate information. For this project, inaccurate information resulted in three change orders to correct design errors related to retaining walls. The Department informed us there were several change orders that addressed the need to correlate certain points in the DTM to the actual ground elevation. These change orders required additional surveying work and modifications to retaining wall heights, earthwork quantities, and drainage modifications. These change orders totaled \$423,800. These correlations between the DTM and the actual terrain should have been identified during the design phase of the project.

Of the 156 change orders, we identified 47 (approximately 30 percent) that the Department coded as either a design error or contract plan error. These totaled approximately \$6.3 million.

We identified seven change orders that resulted from environmental violations. These added approximately \$4.5 million to the cost of the project and were in addition to fines. The Department stated it had previously discussed these issues and updated its Highway Runoff Manual to clarify environmental requirements for designers.

We also identified five change orders issued for items such as quantity estimation errors related to excavation, quantity of unusable native material and import of usable material, errors in contract quantities for materials and outstanding issues for project closure work which related to design, redesign, and incorrect calculations. These change orders totaled approximately \$1 million.

Payroll/Force Account Issues

The whistleblower asserted a subcontractor was not paying truck drivers who were new hires the prevailing wage, which is required by federal law. The Department reviewed

certified payrolls for the project from 2003 through 2008 and sent letters to the prime contractor asking for clarification of possible payroll errors. Some concerns were:

- Street sweeper drivers were not listed on certified payrolls.
- Missing certified payrolls.
- Employees shown on force account sheets used to document who was at work and what they were doing and what equipment was being used did not appear on certified payrolls.
- Payment of regular rather than overtime hours.
- Incorrect overtime hours.
- A subcontractor not paying prevailing wage to “new-hire” truck drivers.
- Payments to more than one person for the same work.
- Discrepancies between labor hours worked and equipment hours charged.
- Lack of documentation and incorrect information.

In e-mails dated April 24-25, 2008, the subcontractor stated to the contractor the Department should have resolved the payroll issues monthly and, if the force account and certified payrolls did not match, the Department should have withheld payment. The purpose of force account is to fully reimburse the contractor for costs incurred when it is difficult to provide adequate measurements or to estimate the cost for certain items of work. However, the subcontractor also stated:

“ . . . may have under paid a few of the truck drivers below the prevailing minimum wage but we also have paid a lot of them over the prevailing wage and it works both ways where you will have to adjust payment for those who we over paid them.”

This indicates the subcontractor may have violated federal prevailing wage law and did not adequately document certified payrolls and force accounts.

It is the contractor’s responsibility to ensure the subcontractor’s compliance with prevailing wage law. The Department’s Standard Specifications Book, Section 1-07.9(5), states that “all certified payrolls shall be complete and explicit”. During our investigation, witnesses stated the Department checked 100 percent of certified payroll at the beginning of a contract and only 10 percent each month after that. The Department stated this approach is a standard practice by the Department and has been approved by the Federal Highway Administration as adequate stewardship of this federally mandated contractual requirement.

A Department construction specialist reviewed paperwork and stated he found multiple instances of payroll errors, including labor hours not reconciling with equipment hours, unsigned force account sheets, and invoices submitted by the contractor with insufficient documentation that the project office paid. In e-mails dated April 28, 2008, the construction specialist stated he could not determine what was actually paid and that the payroll issues extended through the life of the contract.

Through letters exchanged from August through December 2008, the Department and the prime contractor and subcontractor ultimately reached an agreement concerning all payroll issues. The Department stated that when an employee was owed money and was no longer employed with the subcontractor, the check was sent to the state Department of Labor and Industries, which tried to find the employee. During the

investigation, the Department stated it considers these issues resolved and the matter closed.

Our Office did not independently verify whether the Department in fact addressed all payroll discrepancies. We determined it would be costly and inefficient to review five years of records.

The Department stated its headquarters construction office has clarified the requirements of Force Account documentation in the Department's Construction Manual. It is also a point of emphasis with the Department's construction documentation engineer.

Environmental Regulation Violations and Fines

Part of the project was built near wetlands. During construction, woody debris and logs moved off the property had to be stored. As a result of failing to adequately design onsite storage areas for this, the contractor on December 22, 2003, began putting the material in wetland buffers. On March 29, 2004, the Department landscape architects discovered the stockpile. On April 8, 2004, it notified Ecology, which considered this stockpiling to be a violation of the permit that was issued for this project. On April 30, 2004, Ecology issued a stop-work order in the wetlands, but the contractor continued to work for five additional days in violation of that order.

A letter dated May 19, 2004, from the Department to the Corps stated, *"The decision to place the material was driven by the severe lack of space within the project limits for storing materials."* The letter goes on to state, *"The operation was agreed upon by mutual consent of . . . WSDOT Project Engineer and . . . [Contractor's] Project Manager. The manner of placement was determined by . . . [Subcontractor's] Project Manager."* The letter further states, *"The primary cause of these wetland impacts was a direct result of not installing the appropriate fencing around the resources to be protected . . . We take full responsibility for not ensuring these protective measures were established."*

On May 20, 2004, the Department released its internal investigation into these environmental violations, which identified multiple factors, including:

- Internal communication problems.
- Assumptions, misinterpreted terminology and faulty logic.
- Use of unsuitable woody debris and separation of woody debris and fine materials.
- Environmental requirements were not incorporated into contract provisions.
- Department's standard contract allows work in wetlands without approved roadside work plan.

On July 21, 2004, Ecology issued a notice of penalty to the Department and the contractor for filling in a wetland with project debris, stating they engaged in *"willful or knowing violations."* Ecology fined the Department and the contractor \$121,000. The Department paid the fine on December 8, 2004.

The construction contract states:

"The first order of work shall be installation of construction fence to delineate sensitive areas. No other work shall be performed on the

project site, other than the mobilization of equipment and materials to approved staging areas, prior to this construction fence being installed and accepted by the state.”

Ecology further stated this had not been done. The Department, as a result of this violation, has clarified this requirement and now requires wetland delineation to occur on all highway construction projects.

The Department's internal investigation also found that while the fencing was, “. . . intended to protect sensitive areas from construction activities . . . Both parties deemed that fencing the entire project area would not provide additional protection to resources and would create a maintenance problem. It was the consensus of the people . . . that fencing was not installed around Mitigation Area 2 because it was considered a legitimate construction activity area, not a sensitive area.”

That investigation further found that changes to the original fencing requirements submitted to Ecology were not cleared with Ecology staff and other regulatory agencies. The Department told us that, as the result of the project decisions, issued guidance to all project engineers clarifying the requirement and approval levels to make modifications.

The U.S. Army Corps of Engineers determined the project had violated the Clean Water Act. The Department and the Corps entered into a settlement in July 2004 through which the Department paid a \$50,000 penalty and agreed to:

- Not fill wetlands without permission.
- Restore the eight affected wetlands.
- Create and enhance wetlands to compensate for damaged wetlands.
- Replace the project engineer.
- Hire an independent environmental consultant for the project.

The Department hired an independent environmental consultant as required by the settlement for the project and to help the Department establish statewide criteria to prevent this situation from happening again. The expertise provided by the consultant benefitted the entire Department's construction program. This added \$836,694 to the project cost.

The settlement stipulated *“The replacement project engineer or an equally qualified engineer shall be the project engineer until the project is complete. The original engineer will not be associated with the project in any decision-making capacity.”* However, from July 2007 through January 2009, the Department reassigned the original engineer to the project. The Department stated the project had reached substantial completion in April 2007, which was prior to the project engineer being reassigned to the project.

In addition to the fines from the Department of Ecology and the Corps of Engineers, the Department paid a \$12,727.60 civil penalty for the environmental infraction to King County Development and Environmental Services.

Woody Debris Storage

Because the Design Office underestimated how much space would be needed for storage of material on the construction site, it had to change the scope of the project work to allow off-site storage. It did not issue change orders prior to performance of this additional work.

These change orders were approved in August 2004 and June 2005. A change order issued August 27, 2004 for \$203,675 paid the contractor for work that had already been completed to load, haul and dispose of woody debris. A change order issued June 10, 2005 for \$766,324 corrects a contract error by revising the provision regarding disposal of woody debris and provides compensation to the contractor for additional work.

Beginning September 2004, the Department rented three acres of storage space at \$1,100 per acre a month. We did not find any invoices for 2004, but we found invoices for April 2005 through April 2007 that show the Department paid a total of \$107,331.84. The monthly lease amounts include percentage markups allowed by the contract:

- \$82,500 in lease payments.
- \$20,097 in subcontractor markup of 21 percent.
- \$5,869.71 in prime contractor percentage markup of 7 percent to 12 percent.

In addition, without issuing a change order, the Department paid the contractor for the cost of labor and machinery to move the material to the storage site in September 2004 and then back to the site.

Failure of the design office to address the storage issues during design phase resulted in more than \$1 million being added to this project for lease payments, labor and equipment hauling the woody debris to and from the storage facility and construction site. In addition, failure to address this issue led to the environmental violations.

The Department stated, as the result of this project, has issued clear guidance to design project engineers and environmental staff that projects require the contractor to independently manage their own woody debris.

Timber Sales

During our investigation, we found documentation related to the sale of marketable timber from the construction site. Letters from the contractor to the Department propose a percentage split of the proceeds: 40 percent to the Department, 30 percent to the logger, 25 percent to the subcontractor and 5 percent to the contractor.

The lumber mills wrote checks to the contractor. The contractor wrote to the Department multiple times, attempting to get a decision regarding distribution of the money. A memorandum from the contractor's business manager to its foreman dated June 24, 2004 stated that the contractor was "*holding eight checks totaling \$18,882.93; this does not include the \$5,664.88 that went directly to the logger. This makes the total revenue to date at \$25,547.81.*"

The inspector's daily reports we found show the logging company was on site hauling logs and woody debris. Other documentation we found, dated May 12, 2004, stated

“excess timber – sharing proceeds from milling timber with the contractor,” indicate the Department knew about the request from the contractor regarding the percentage split.

We found no documentation to show the Department received any proceeds from the timber sales. Witnesses stated they had no knowledge of the timber sales or whether the Department received any money from them, and if so, paid the timber tax to the State Department of Revenue as required by state law.

Construction Site Pumps

Construction site pumps remove or divert water or to take water from one elevation to another.

At the beginning of the project, the subcontractor rented the pumps and the Department paid the operating costs and rental charges. At some point during the project, the subcontractor purchased some of the pumps.

When the project engineer was closing this project, a disagreement arose between the Department and the subcontractor relating to the amount owed for the pumps. We requested all documentation related to the pumps.

In an e-mail, the project engineer stated he believed the Department had paid the amount required by the contract and the contractor had not provided documentation to substantiate a claim he had been underpaid. He stated the contractor later dropped the matter.

In the e-mail, he stated: *“I believe it was an amount of 90K, by stating that it could not be substantiated. It concluded that if you analyzed the records that could not be substantiated we overpaid by about \$15,000. The conclusion I came to was that the contractor could not prove the under payment and the state could not prove the overpayment. The contractor never pursued the issue further”*

In a letter dated September 23, 2008, the subcontractor stated to the contractor that the Department had not paid some of what was due for the pumps and took the position it was owed an additional \$91,481.90. In a letter to the contractor dated October 1, 2008, the Department stated it believed it was owed \$3,018.22 by the subcontractor.

In a letter dated October 9, 2008, the subcontractor stated to the contractor it concurred with the Department’s calculations of a credit due for the operation hours for certain pumps. The subcontractor stated that figure could be affected if the Department finished its review of 78 percent of the pumps’ operating hours. However, we found no formal documentation to show the issue was resolved before the project engineer closed the construction contract.

This dispute arose in part because some of the pumps had meters on them and others did not. A decision was made to pay 176 hours a month per pump instead of taking the meter readings. In an e-mail dated August 29, 2008, the project engineer stated he found no written agreement to pay 176 hours per month and could not determine who had made the decision.

Other issues arose regarding who was to pay for pump parts and refueling. While it identified these issues related to pumps, the Department could not provide us with a total dollar amount paid relating to these pumps.

The Department stated the pumping system, as provided, greatly exceeded what was contemplated during the initial design. The expanded pumping system was required to meet new storm water runoff requirements. The discussions surrounding reimbursement are not unusual for a large force account element. Ultimately, the cost disagreements were settled and an agreed payment was made.

Other Issues

Percentage Markups

Department specifications allow prime contractors and subcontractors percentage markups on force account work on labor (29 percent), equipment (21 percent) and materials (21 percent). The force account is for work that was not anticipated when the contract was bid and is used to reimburse the contractor for any costs incurred on this unanticipated work. The prime contractor takes a percentage markup of 7 percent to 12 percent on the total amount of the payment. If the prime contractor does the work with its own equipment, it is allowed to take the 29 percent and the 21 percent but does not take the 7 percent to 12 percent. These markups add a considerable amount to the total amount of project costs.

Small Purchases

We also determined the prime contractor was paid for the purchase of small items. For these items, the prime contractor and the subcontractor took their allowed markups.

Item	Bill	Markup	Total
Pitch and three rakes	\$48.74	21% and 7%	\$63.11
Wading pool for "gas containment"	\$34.64	21% and 7%	\$44.84
Three pairs men's gloves	\$32.57	21% and 10%	\$43.35
Material for steps	\$44.63	21% and 10%	\$59.40

Double payment

During the investigation, we found two paid invoices for erosion and water pollution control to the same company, for the same work, under the same invoice number, but on different dates. The prime contractor took a 21 percent markup on each invoice.

Date	Invoice No.	Amount	Markup	Total
12/5/04	21282	\$6,410	21 percent	\$7,756.10
3/15/05	21282	\$6,410	21 percent	\$7,756.10

Department of Transportation's Lessons Learned

During our investigation, at our request, the two subjects prepared a list of significant lessons learned from their experience on the State Route 18 construction project. The Department had previously put in place new policies and procedures to ensure design, environmental and payroll errors would not be repeated in future construction projects.

1. Established Environmental Compliance Assurance Procedure for consultation, notification and reporting to agencies for noncompliant events.
2. Each Department's regional office has developed and implemented a "Construction Compliance Procedures" plan which establishes compliance goals, methods and procedures to be compliant.
3. Revisions to the Department's Standard Contract Specifications that clarify expectations of our contractors for their responsibility to plan their work for compliance with environmental permits.
4. Process of generating project cost to complete forecasts has been standardized. The review for inclusion of sales tax has been added to all change orders prior to approval.
5. Developed annual statewide Environmental Compliance Training for Department inspectors.
6. Contract documents now contain summarized environmental compliance information. This provides the contractor and project office the information needed to clearly identify the environmental compliance requirements for the contract.
7. Implemented Commitment Tracking System statewide identifying project environmental commitments during design development.
8. Department Design Manual now contains language alerting designers to the possible errors in photogrammetric data when designing retaining walls.
9. Several General Special Provisions have been created and made available for designers to use as needed to meet specific project needs, i.e., system for temporary stormwater treatment, installation of fence and others.
10. The NW Region has established two new positions, Environmental Technical Advisor and Environmental Compliance Inspector. Both roles are dedicated to compliance issues during design development and construction.
11. Department projects have added sufficient gravel borrow quantity to replace moisture sensitive native material.
12. Department projects have larger, more realistic budgets for project temporary erosion control.

Conclusion:

Based on our investigation, our review of documents, interviews and the Department's internal investigation, we find reasonable cause to believe an improper governmental action occurred.

We found monitoring and management issues across multiple Department offices and personnel including failures in the design process, a lack of control and oversight during

construction, failure to monitor wetland areas that resulted in environmental violations and fines and failure to review, analyze and reconcile expenditures and force account documentation.

This resulted in a gross waste of public funds. The project costs, originally bid at \$55.9 million, grew to \$98.4 million. In addition, change orders issued during this project totaled \$16 million; of that, approximately \$6.3 million resulted from design/contract errors.

Further, the environmental violations led to additional costs of approximately \$4.5 million.

DEPARTMENT'S PLAN OF RESOLUTION

It is important to us that we appropriately and consistently adhere to all state and federal regulations in the administration of highway contracts. We take our responsibility to the public seriously and endeavor to continually improve and maintain the public's trust.

As a result of the Department's May 2004 internal investigation of issues with the project and related construction contract (No. 6611), the Department took appropriate employee disciplinary actions and implemented the necessary corrective actions as outlined in the Department of Transportation's lessons learned section of your report.

I value our working relationship with your agency.

STATE AUDITOR'S OFFICE REMARKS

We thank Department officials and personnel for their assistance and cooperation during the investigation.

Whistleblower Investigation Criteria

State of Washington Department of Transportation

We came to our determination in this investigation by evaluating the facts against the criteria below:

RCW 42.40.020(5), Definitions, states:

“Gross waste of funds” means to spend or use funds or to allow funds to be used without valuable result in a manner grossly deviating from the standard of care or competence that a reasonable person would observe in the same situation.

Title 29, Code of Federal Regulations, Section 5.5(a)(3)(ii)(A) states, in part:

The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency). The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i)

RCW 39.12.020, Prevailing rate to be paid on public works and under public building service maintenance contracts – Posting of statement of intent – Exception, states in part:

The hourly wages to be paid to laborers, workers, or mechanics, upon all public works and under all public building service maintenance contracts of the state or any county, municipality or political subdivision created by its laws, shall be not less than the prevailing rate of wage for an hour's work in the same trade or occupation in the locality within the state where such labor is performed. For a contract in excess of ten thousand dollars, a contractor required to pay the prevailing rate of wage shall post in a location readily visible to workers at the job site

ATTACHMENT 1

BACKGROUND

Once the **Department** approves and has funding for a highway construction project, it determines which regional office is responsible for oversight of the construction project.

The **Regional Design Office** has the responsibility for designing the project and contract plans. Its staff completes plans, specifications and estimates for the construction project. The staff also ensures all permits, authorizations and approvals are secured. Plans are designed pursuant to Department specification and standards manual.

The **Regional Traffic Unit** looks at traffic control plans and temporary movement of traffic lanes and safety features.

The **Regional Environmental Unit** staff ensures compliance with federal, state and local environmental laws; they study, analyze and make determinations as to the impacts of transportation facility construction and secure the necessary permits and approvals from all resource agencies. They also determine the project's environmental effects and appropriate level of mitigation.

The **Regional Landscape Architecture Unit** staff provides guidance through planning, design, construction, and maintenance phases of construction. They develop plans for wetland mitigation and enhancement sites, weed control, irrigation installation and plant material establishment. This unit ensures the landscaping elements are implemented during construction. They also direct and oversee the roadside aspects of the project which include visual, operational, environmental and auxiliary functions of the roadside.

The **Regional Utilities Unit** is responsible for coordination with the utility companies.

The **Regional Plans Review Unit** staff reviews all aspects of the plans, specifications and estimates for various types of highway construction and maintenance projects. They manage the distribution, comments and revisions and ensure responses to all issues. They assemble contract documents and addenda for printing and distribution. They ensure the plans, specifications and estimates meet agency standards and are properly packaged for advertisement.

The **Department's Bridge and Structures Office** is responsible for and provides structural engineering services for bridge design. Any design authorized at the regional level is subject to review and approval by this office.

The **Department's Geotechnical Services Division** provides the full range of geotechnical engineering and engineer geology services required to support the design, construction, and maintenance needs of the state's transportation system.

The **Department's Materials Division** is responsible for and tracks costs of construction materials used on construction projects.

The **Department's Headquarters Plan Review Office** is provided a copy of the construction plans for review.

The **Department's Contract Ad and Award** office is responsible for advertising the contract for bid.

Once the project has been advertised, bids are received. The Olympia Construction Office, Contract Ad and Award Office and the Regional Office will review and evaluate the bid items. If the bid amount is over the ten percent engineer's estimate the bid is rejected. After everyone has reviewed it, the contract is awarded. After the contract has been awarded, construction can proceed and the day-to-day oversight goes to the established project construction office for this contract.

The **Project Construction Office** staff ensures the contract is appropriately executed and is responsible for the project schedule and budget. They assure contract compliance by inspecting materials and contractor's work and comparing this work to contract plans and provisions. This office processes payments for appropriately executed work.

This office is comprised of a project engineer, assistant project engineer, field engineer, project inspector and office administrative staff. The project engineer and assistant project engineer's primary responsibilities are to ensure the project is constructed according to the plans, specials and standard specifications. They monitor and oversee the day-to-day activities of the project. The project engineer has limited authority for decisions and issuance of change orders not exceeding \$50,000.00. There are a series of approvals which must be obtained for most change orders under the \$50,000 threshold. All change orders greater than \$50,000 are executed at higher levels within the Department.

The field engineer ensures the construction project progresses and the contractor is in compliance with the contract. He also supervises field inspectors who oversee specific aspects of the construction project on a daily basis. The project inspector for mitigation and permit compliance work is responsible to ensure the contractor is in compliance with the environmental elements of the contract.

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